Nos. 27 30 32

SUPREME COURT, U.S.

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Supreme Court of the United States

OCTOBER TERM, 1949

Nos. [redacted]
27, 30 + 32

SECRETARY OF AGRICULTURE, *Petitioner*

v.

CENTRAL ROIG REFINING COMPANY and WESTERN SUGAR REFINING COMPANY, *Respondents*

PORTO RICAN AMERICAN SUGAR REFINERY, INC., *Intervener-Petitioner*

GOVERNMENT OF PUERTO RICO, *Intervener-Petitioner*

THE AMERICAN SUGAR REFINING COMPANY, ET AL., *Interveners-Respondents*

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE AMERICAN SUGAR REFINING CO., ET AL., IN OPPOSITION

HOWARD C. WESTWOOD,
DONALD HISS,
DANIEL M. GRIBBON,
Counsel for Interveners-Respondents.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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Supreme Court of the United States

OCTOBER TERM, 1948

Nos. 575, 580 and 585

SECRETARY OF AGRICULTURE, *Petitioner*

v.

CENTRAL ROIG REFINING COMPANY and WESTERN SUGAR REFINING COMPANY, *Respondents*

PORTO RICAN AMERICAN SUGAR REFINERY, INC., *Intervener-Petitioner*

GOVERNMENT OF PUERTO RICO, *Intervener-Petitioner*

THE AMERICAN SUGAR REFINING COMPANY, ET AL., *Interveners-Respondents*

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE AMERICAN SUGAR REFINING CO., ET AL., IN OPPOSITION

STATEMENT

This case involves a dispute between three Puerto Rican sugar refiners as to the relative amounts of refined sugar each should have been allowed to market in the continental United States in 1948.

The Sugar Act of 1948 establishes annual quotas which limit the quantities of sugar that various foreign and domestic producing areas may market in the continental United States in interstate or foreign commerce or commerce between the territories or possessions and the mainland. Whenever it is necessary to assure an orderly flow of sugar, to prevent disorderly marketing, or to afford an equitable opportunity to all interested parties to participate in the quotas, the Secretary of Agriculture is authorized to make allotments among sugar processors of any quota established by the Sugar Act for a particular area. The Secretary found that it was necessary for 1948 to make a proration of the Puerto Rican refined sugar quota established by § 207 of the Sugar Act, and allotted a share of this quota to each of six Puerto Rican refiners. Upon the statutory appeal of two of the three largest of those refiners, the United States Court of Appeals for the District of Columbia set aside the order of the Secretary on the ground that it failed to give proper effect to each of the three standards which § 205 of the Sugar Act provides shall be considered by the Secretary in making such allotments.

The largest of the Puerto Rican refiners, Porto Rican American, intervened below under § 205 (d) of the Act which grants a right to intervene to any "interested person," and supported the Secretary's order. It has filed a petition for a writ of certiorari to review the decision of the Court of Appeals. The Secretary of Agriculture has also petitioned for review of the decision reversing his order. Both of these petitions urge that the Court of Appeals erred in its interpretation of § 205 of the Sugar Act.

The Government of Puerto Rico, an intervener below by special order of the Court of Appeals and not pursuant to § 205 (d) of the Act, also has petitioned for a writ of certiorari. It asserts no concern with the question of statutory interpretation dealt with by the Court of Appeals. Rather, it urges this Court to take up the constitutionality of § 207 of the Sugar Act which establishes the refined

sugar quotas. The Secretary's petition states that, in the event this Court disagrees with the interpretation of the statute made by the Court of Appeals and reinstates the Secretary's order, this Court will then come to the constitutional question, but neither the Secretary's nor Porto Rican American's petition seeks review on the basis of the constitutional issue.

This brief in opposition to the granting of a writ of certiorari is submitted on behalf of ten domestic sugar refining companies who intervened below pursuant to § 205 (d) of the Sugar Act in support of the constitutionality of § 207 of that Act.

REASONS FOR DENYING THE WRIT

I

The Decision of the Court of Appeals Raises No Constitutional Question

The two Puerto Rican refiners dissatisfied with the Secretary's allotment of refined sugar to them petitioned the Court of Appeals to do one thing—to set aside the Secretary's sugar allotment order. This the Court did. At least four grounds were urged upon that Court as the basis for vacating the order. (R. 181-182). One of these was that § 207 of the Act, which limits the total amount of refined sugar that can be marketed in the continental United States from Puerto Rico and other offshore areas, is unconstitutional. The lower Court expressly declined to pass on that question, because it decided that there was full and sufficient basis for setting aside the Secretary's order—the only relief asked in the petition presented to it (R. 181)—in the Secretary's failure to give proper weight to the standards set forth in § 205 of the Act governing the allotment of quotas. In effect, the Court refused to render an advisory opinion as to whether a proper order of the Secretary, one that conformed to the statutory standards, would violate any provision of the Constitution.

The lower Court's interpretation of § 205 differed from that of the Secretary in three respects.

In determining "ability to market," one of the statutory considerations governing the allotment of quotas, the Secretary relied upon the best single year's performance for each refiner during any one of the 13 years preceding 1948. The lower Court held that "ability to market" means current ability, and, if performance is the measure of that ability, it must be current performance and could not be performance as of 13 years ago. (R. 196). In giving effect to "past marketings," another consideration prescribed by the statute, the Secretary based his findings upon marketings during the pre-war period 1935-1941. The lower Court held that, in excluding from consideration the six years, 1942-1947, and looking only to pre-war years, the Secretary had failed to comply with the Act. (R. 196). The Court did not decide that, if drought, fire, flood or other abnormalities affected the entire sugar crop or a particular refiner's marketings in a recent year, those unusual circumstances must be ignored in applying the statutory standards. No such unusual circumstances were pertinent to the order reviewed by the Court and any statement in its opinion which is characterized as foreclosing the Secretary from giving proper consideration to such circumstances is entirely dictum.

The third ground on which the lower Court reversed the Secretary's order had to do with the weight to be attached to the third consideration prescribed by the statute, the processings of sugar to which proportionate shares pertained. The difference between the Court and the Secretary in this respect is more apparent than real. The net of the decision below is that the Secretary may not conclude that this statutory standard is *inapplicable* to the allotment of a quota. Provided he considers this factor, there is nothing in the lower Court's opinion that prevents the Secretary from attaching to it only such weight as all relevant circumstances justify. (R. 196-197).

For these reasons the lower Court set aside the Secretary's order, as the appellants below had prayed. The entire matter, as it presently stands, is in a posture no different from that in which it would be if the Secretary were for the first time allotting the Puerto Rican quotas, except that he has been provided with an interpretation of the Act by the Court of Appeals.

Hence the only question presented by the decision of the Court of Appeals is the very narrow question whether it erred in its interpretation of § 205 of the Sugar Act. Its decision presents no constitutional question.

II

Reversal of the Court of Appeals and Reinstatement of the Secretary's Order Would Raise No Substantial Constitutional Question

The argument of the Government of Puerto Rico that § 207 of the Sugar Act of 1948 is unconstitutional proceeds essentially on these grounds: It admits the need for Congressional limitation upon the marketing of sugar. It describes the conditions of over-supply which made such action imperative and refers to the benefits from such legislation to all domestic sugar producing areas, including Puerto Rico. (Petition, pp. 4-5). It agrees that Congress can correct these conditions by regulating the marketing of raw sugar, and by prescribing quotas therefor, including a quota for Puerto Rico. (Petition, p. 4). It argues, however, that, in providing for quota regulation by the Secretary for *refined* sugar, as distinguished from *raw* sugar, Congress "ventured where there was no legislative need." (Petition, p. 5). In addition it claims that the provision for a refined sugar quota for Puerto Rico is so arbitrary as to offend the due process clause.

Surely, after the repeated adjudications of this Court sustaining marketing quota and similar statutes during recent years, it cannot now be thought that this Court need

be occupied once more with consideration of a question which presents nothing more than the nature and extent of a "legislative need." Long past is the day when the judiciary substituted its judgment for that of the legislature. Only recently a unanimous Court had this to say:

> "Looking through the form of this plea to its essential basis, we cannot fail to recognize it as an argument for invalidity because this Court disagrees with the desirability of the legislation. We rehearse the obvious when we say that our function is thus misconceived. We are not equipped to decide desirability; and a court cannot eliminate measures which do not happen to suit its tastes if it seeks to maintain a democratic system. The forum for the correction of ill-considered legislation is a responsive legislature." *Daniel* v. *Family Security Life Ins. Co.*, U. S. Sup. Ct., February 28, 1949, p. 5.

A. THERE IS A "LEGISLATIVE NEED" FOR REFINED SUGAR QUOTAS

In the Sugar Act of 1948 Congress continued for five years a pattern of temporary regulation of the marketing of sugar which had been adopted originally in the Jones-Costigan Act of 1934, and continued in the Sugar Act of 1937. The sugar industry was faced with disaster in 1934. There was over-expansion in the growing of sugar cane and sugar beets, and there was excess capacity in the facilities for refining. Previous governmental controls, limited to tariff walls and then to an experiment in marketing agreements, recently described as a "fiasco,"[1] had broken down completely. It was essential that a more direct form of control be introduced in order to provide the necessary stabilization. Hence in the Act of 1934 and its successor acts there was adopted the now familiar system of quotas on marketing in interstate commerce and in commerce between the offshore areas and foreign countries and the States.

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[1] Bernhardt, *The Sugar Industry and the Federal Government* 137 (1948).

This quota system works as follows:

The Secretary of Agriculture is directed to determine annually the total "amount of sugar needed to meet the requirements of consumers in the continental United States." § 201 of the Sugar Act. Then there is an apportionment, by express statutory provision, of 4,268,000 short tons among the five sugar producing areas of the United States: the beet area, the mainland cane area, and the cane areas of Hawaii, Puerto Rico and the Virgin Islands. Of this total amount the beet area receives nearly two million tons, Hawaii receives just over a million tons, Puerto Rico just under that figure, and the mainland cane area a half million tons. § 202 (a). In addition to the 4,268,000 tons, the statute assigns close to a million tons to the Republic of the Philippines. § 202 (b). Any remainder of the annual continental sugar requirement is assigned to foreign countries, other than the Philippines, with practically all of it to Cuba. § 202 (c). Provision is made for the reallocation of deficits when the Secretary finds that any of the above areas will be unable to supply its quota. § 204. Also, from time to time during the course of the calendar year, the Secretary may change the consumption requirements previously determined by him under § 201.

These statutory quotas do not distinguish between raw and refined sugar. If the Act had stopped with the establishment of such quotas—as the Government of Puerto Rico urges—grave injury and dislocation would have been visited upon the continental cane sugar refining industry. The continental cane refineries have an annual capacity of 7,000,000 tons.[1] In adopting a general marketing quota system, Congress was drastically limiting the supply of raw sugar available to these refineries. The beet area quota was not available to cane refineries; beets are made into sugar for the consumer in one continuous process by fac-

[1] *Hearings before the House Committee on Agriculture on the Sugar Act of 1948*, 80th Cong., 1st Sess. 87 (1947).

tories in the beet area. Therefore, if the sugar quotas for the offshore areas and foreign countries were filled with refined sugar, the mainland refineries would be limited to the mere half million tons allotted by the statute to the mainland cane area, for the Act foreclosed any other source of raw sugar supply. This, of course, would have meant utter ruin for the mainland refining industry.

Here, then, was a "legislative need" which led the Congress to incorporate in the general quota system a provision for refined cane sugar quotas. This consists of a limitation, prescribed in the statute, upon the portion of the quota of Hawaii, Puerto Rico, the Virgin Islands, the Philippines, and Cuba which may be filled each year by refined sugar. § 207 (a)-(e).

The practical operation of this system can be illustrated by experience in 1948. The Secretary finally fixed 7,200,000 tons as the mainland consumption requirement, under § 201 of the Act. Of this amount, 4,268,000 tons were initially allocated under the Act as shown above. However, on account of deficits that later developed in several producing areas, the Secretary adjusted the original quotas. The table below shows (1) this adjusted final quota for each area for marketing on the mainland, (2) the portion of such quota marketed in refined form, and (3) the differ-

ence between the two, or the quota available for the mainland cane refineries.[1]

Area	Final total quota	Portion marketed on mainland in refined form	Quantity available to mainland cane refineries
	(In 1,000 short tons, raw value)		
Domestic beet sugar	1,688	1,688	0
Mainland cane sugar	413	97	316
Hawaii	825	5	820
Puerto Rico	1,024	123	901
Virgin Islands	6	0	6
Philippines, Cuba and other foreign countries	3,244	385	2,859
Total	7,200	2,298	4,902

This table makes apparent the "legislative need" for refined sugar quotas. Had Puerto Rico, for example, been permitted to market its entire quota on the mainland in refined form, the raw sugar supply available to the mainland refineries would have been reduced by about 900,000 tons. And the Act would prevent the mainland refineries from making up this deficit elsewhere.

It cannot be seriously suggested that Congress "ventured where there was no legislative need" in thus stabilizing the supply of raw sugar for cane refineries. Actually the Government of Puerto Rico does not particularly urge that there was no need for legislation; the burden of its argument is that Congress should have met this need in some other manner.

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[1] The final quota for the various areas which appears in the first column of figures is published in 13 FED. REG. 7633 (1948). The quantity of refined sugar marketed from each area is reported in Production and Marketing Administration, U. S. Department of Agriculture Release 207-49, Jan. 31, 1949, and U. S. Department of Agriculture Release 296-49, Feb. 11, 1949.

B. THE PROVISION FOR REFINED SUGAR QUOTAS DOES NOT TREAT PUERTO RICO ARBITRARILY

Once the "legislative need" is recognized, it becomes apparent that there is no arbitrary treatment of Puerto Rico in the constitutional sense. The amount of Puerto Rico's refined quota, for shipment to the States, represents the largest amount that had ever been shipped from Puerto Rico at any time prior to the institution of the original quota system in 1934.[1]

Congress might have prescribed a larger amount for Puerto Rico, with a resulting lower amount for refining in the States. Or it might have prescribed a larger amount for Puerto Rico and a correspondingly smaller amount for Cuba. Or it might have cut down on the total beet quota, with a corresponding increase in the refined sugar quota for Puerto Rico. Doubtless there are many other possibilities. And when the present Sugar Act expires—it is a temporary measure—Congress may decide to adopt one of these alternatives if a new Act is adopted. But each of these several possibilities presents its own special problems, and our Constitution leaves to Congress the task of weighing the merits of the alternatives.

> "It is of the essence of the plenary power conferred that Congress may exercise its discretion in the use of the power. Congress may choose the commodities and places to which its regulation shall apply. Congress may consider and weigh relative situations and needs. Congress is not restricted by any technical

[1] Representative Jones of Texas, Chairman of the House Committee on Agriculture, in discussing the bill which became the Sugar Act of 1937, said on the floor of the House of Representatives (81 CONG. REC. 8432 (1937)):

> "These provisions in the bill [the provisions prescribing the refined sugar quotas for territories, including the quota of 126,033 tons for Puerto Rico] would permit the largest amount of direct-consumption sugar or refined sugar to come in from those islands which they ever sent in in any one year prior to the enactment of the original act."

requirement but may make limited applications and resort to tests so that it may have the benefit of experience in deciding upon the continuance or extension of a policy which under the Constitution it is free to adopt. As to such choices, the question is one of wisdom and not of power." *Currin* v. *Wallace*, 306 U. S. 1, 14 (1939).

Thus, entirely aside from the questions as to the constitutional relationship of an unincorporated territory like Puerto Rico to the rest of the United States which the Government of Puerto Rico seeks to inject, what Congress has done in this Act merely represents the balancing of legislative needs and alternatives—and that balancing cannot be done in the courts.

It need hardly be added that the Sugar Act presents no precedent for the arbitrary limitation of shipment of Puerto Rican manufactures to the mainland, as the Government of Puerto Rico seems to argue. (Petition, pp. 20-21). The Act is a complicated measure tailored to the peculiar requirements of sugar growers and processors throughout the United States, including Puerto Rico. It has nothing to do with the very different conditions affecting the cement, or furniture or glass container industry. The Act provides for huge cash benefit payments to growers which in Puerto Rico alone, amounted to about $130,000,000 between 1934 and 1946,[1] to say nothing of the millions of dollars in price premiums[2] paid and being paid by mainland consumers to the Puerto Rican sugar industry. Benefit and restriction must go together for the three refiners in Puerto Rico just as for the rest of the sugar

[1] Benefit payments for each year except 1935 are published in AGRICULTURAL STATISTICS (1947) 625 (Table 726); payments in 1935 are published in SEN. DOC. No. 274, 74th Cong., 2nd Sess. 101 (Table 38) (1936).

[2] The premium over the world market price results, of course, from the Sugar Act's quota restrictions upon sugar production and imports.

industry of the United States. The Constitution does not require that the one be given free of the other.

III

It Would Not Be Appropriate to Consider the Constitutionality of the Sugar Act on This Record

A. This record is utterly barren of any factual basis for assessing the reasonableness of the exercise of the judgment of Congress, even if such a question were open. The record contains only reports and testimony which were submitted to assist the Secretary of Agriculture in the exercise of his statutory duty to allocate among the Puerto Rican refiners the refined sugar quota assigned by the Act to Puerto Rico. There is not a single item of evidence showing or purporting to show that the quota established by the Act is itself unreasonable. In the absence of such evidence, this Court has refused to pass upon the constitutionality of similar economic regulation, even when the question was directly presented. *Borden's Co.* v. *Baldwin*, 293 U. S. 194 (1934). There, in refusing to speculate as to whether a marketing and quota system of regulation for milk was arbitrary and unreasonable, the Court said:

> "But where the legislative action is suitably challenged, and a rational basis for it is predicated upon the particular economic facts of a given trade or industry, which are outside the sphere of judicial notice, these facts are properly the subject of evidence and of findings. With the notable expansion of the scope of governmental regulation, and the consequent assertion of violation of constitutional rights, it is increasingly important that when it becomes necessary for the Court to deal with the facts relating to particular commerical or industrial conditions, they should be presented concretely with appropriate determinations upon evidence, so that conclusions shall not be reached without adequate factual support." 293 U. S. 194, 210.

B. The Court of Appeals properly declined to explore the constitutional question urged by the Government of Puerto Rico. Thus this Court is not benefited by a treatment of that question in a lower court opinion.[1] Nor are there any opinions of other Circuit Courts of Appeals dealing with the question. Indeed, this Act and its predecessors have been singularly free of review in the courts upon any issues, statutory or otherwise.[2] Thus there is here neither conflict nor a "much litigated question." *Cf. Addison* v. *Holly Hill Fruit Products, Inc.*, 322 U. S. 607, 609 (1944).

C. There is an abundance of opportunity to the Government of Puerto Rico and to refiners in Puerto Rico to present the constitutional question in other proceedings, if they wish, and upon a full record devoted to developing the facts relevant to a review of alleged arbitrary action by Congress. The petition of the Government of Puerto Rico not only admits this, but elaborates at some length upon the other opportunities available. (Petition, p. 17). "There are, apart from intervention in a private suit, a number of other ways in which the petitioner might raise anew the question which it is now presenting to this Court." (*Idem.*)

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[1] In Blair v. Oesterlein Co., 275 U. S. 220, 225 (1927), this Court said:

> "This Court sits as a court of review. It is only in exceptional cases, and then only in cases from the federal courts, that questions not pressed or passed upon below are considered here. *Duignan* v. *United States*, 274 U. S. 195. There are specially cogent reasons why this rule should be adhered to when the question involves a practice of one of the great departments of the government."

[2] Since the original Sugar Act of 1934 only five cases involving any phase of it and succeeding Sugar Acts have been before the federal courts. Vives, et al. v. Serralles, 145 F. 2d 552, 555 (C. C. A. 1st 1944); Spreckels Sugar Co. v. Wickard, 131 F. 2d 12 (App. D. C. 1941); Gay Union Corporation v. Wallace, 112 F. 2d 192 (App. D. C. 1940), *cert. denied* 310 U. S. 647 (1940); Fajardo Sugar Growers Association v. United States, 76 F. Supp. 377 (S.D. N.Y. 1948); Ewa Plantation Company v. Wallace, 1 S. C. C. C. (N.S.) 208 (1934).

IV

The Government of Puerto Rico Asserts No Justiciable Interest

As we stated at the outset, *supra*, page 3, the Government of Puerto Rico's petition is the only one of the three that have been filed which presents the constitutional question as the basis for granting the writ. Apart from all the other reasons for denying its petition, it lacks both standing to sue and a justiciable interest in this question.

The only interest asserted by the Government of Puerto Rico is its interest as a sovereign or *parens patriae*. (Petition, p. 9). It expressly admits that it asserts no proprietary interest.

But the Government of Puerto Rico is a mere municipal creature of Congress; it is neither sovereign nor *parens patriae*. Puerto Rico is not even an incorporated Territory. *Balzac* v. *Porto Rico*, 258 U. S. 298, 305 (1922). It has no independent sovereignty, like a State. *Domenech, Treasurer of Puerto Rico* v. *National City Bank of New York*, 294 U. S. 199, 204 (1935). It is the United States, not the Government of Puerto Rico, which is the *parens patriae* with respect to the people of that island. *Mormon Church* v. *United States*, 136 U. S. 1, 47, 56-57, 62, 66 (1890). That Government is but an instrumentality of the Congress, *Talbott* v. *Silver Bow County*, 139 U. S. 438, 446 (1891), and as such cannot be heard to challenge the validity of an Act of the Congress.

Even if the Government of Puerto Rico had the status of a sovereign state, its standing to raise this question would not be improved. A State may not, on behalf of its citizens, challenge the validity of an Act of Congress, either in the lower federal courts or pursuant to the original jurisdiction of this Court. *Jones, Governor ex rel. State of Louisiana* v. *Bowles*, 322 U. S. 707 (1944); *Florida* v. *Mellon*, 273 U. S. 12 (1927); *Massachusetts* v. *Mellon*, 262 U. S. 447 (1923). Nor is the force of this longstanding rule in

any way impaired by this Court's decision in *Georgia* v. *Pennsylvania Railroad Company*, 324 U. S. 439 (1945), where the Court expressly re-affirmed the lack of standing of a State to challenge an Act of Congress, saying:

> "This is not a suit like those in *Massachusetts* v. *Mellon*, and *Florida* v. *Mellon*, *supra*, where a State sought to protect her citizens from the operation of a federal statute. Here Georgia asserts rights based on the anti-trust laws." 324 U. S. 439, 446-447.

The Government of Puerto Rico did not intervene below as an "interested person" under that provision of the Sugar Act authorizing such intervention. § 205 (d). Rather it intervened by special permission of the Court of Appeals under its rules. The Act authorizes a petition in this Court for writ of certiorari only by an "interested party" in the statutory sense. § 205 (e). In any event, the Constitution permits this Court to hear only those with a justiciable interest.

Respectfully submitted,

HOWARD C. WESTWOOD
DONALD HISS
DANIEL M. GRIBBON
Counsel for The American Sugar Refining Company, et al. Interveners-Respondents.

March 31, 1949